

## **UTILITY CONSUMER PARTICIPATION BOARD**

February 4, 2008

### **MINUTES**

A meeting of the Utility Consumer Participation Board was held Monday, February 4, 2008 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

#### **I. Call to Order**

Acting Chairman Marc Shulman called the meeting to order at 10:26 a.m. Board members present: Ron Rose, Marc Shulman, Sister Monica Kostielney and Alexander Isaac (via telephone conference). Members absent: Harry Trebing. Other appearances: Michelle Wilsey, LeAnn Droste, Terri Eklund, Donald Keskey, David Shaltz, Robert Nelson, Jim Ault, Tim Fischer.

#### **II. Agenda**

Rose moved, second by Kostielney and motion carried to approve agenda as printed.

Isaac joined the meeting at 10:30 a.m. via conference call.

#### **III. Public Comment**

James Ault, Michigan Electric & Gas Association and Tim Fischer, Michigan Environmental Council introduced themselves.

#### **IV. Minutes**

Kostielney moved, second by Isaac and motion carried to approve the minutes of December 3, 2007 as printed. Rose abstained from voting due to his absence at the December 3, 2007 meeting.

#### **V. Correspondences**

The following correspondences were received and placed on file:

1. AARP case status report as of 12\_4\_2007.
2. AARP case status report dated 2\_3\_2008.
3. RRC UCRF Case status report dated 1\_30\_2007. (Shaltz).
4. MEC/PIRGIM grant amendment request (UCRF Grant 08-01) letter dated 1\_28\_2008.
5. MEC/PIRGIM email correspondence sent 2\_3\_2008 with budget detail for grant amendment requests.
6. Order dated 1\_22\_2008 re: MEC/PIRGIM v. MPSC and Indiana Michigan Power Company.
7. MEC/PIRGIM amended budget sheets for grant amendment requests dated 1/28/2008.
8. UCRF Financial Report through 2\_4\_08 (Eklund).

#### **VI. Old Business**

Isaac requested that the financial reports be distributed in advance of the meeting. Acting Chairman Shulman requested a brief summary of the financial report. Eklund explained the items on the report showing the amount appropriated for the Utility Board (08), the amount granted from those funds, amount reserved for administration, and the amount still available for grants. Below that information is a listing of all the grants that are open in 2007, 2008. Rose requested a copy of the report. Shulman noted that \$291,000 is the amount left available for grants. Isaac asked for information on the open grants from 2007. Wilsey noted that two grants were listed as open from 2007 – the Michigan League for Human Services 07-01 (Shaltz), balance \$161,178.32 and the Michigan Environmental Council 07-02 (Keskey), balance \$48,024.82.

Shulman asked about grant publicity efforts. Wilsey noted that broadcast efforts in the past were expensive and had not produced results. She had discussed the grant program with David Konkle from the City of Ann Arbor and Richard Reed, Lewis, Reed & Allen, P.C. due to their affiliations and

expertise. She intended initially to try and educate parties that are engaged in energy matters and that are or potentially could represent qualified client groups. Kostielney noted that though the numbers of grantees are few they represent thousands of people. The groups participating represent a vast array of members groups with strong communications systems. Between them there are not very many residential customers in the state that are not represented. The board is not deficient in representation of customers and their diverse interests for purposes of the grant.

Mr. Rose asked about billing procedures. Droste explained that the state has 45 days to pay the invoice from the date received. Her department asks vendors to submit a monthly report. It is not required however, if there are no expenditures incurred. If there are expenditures in a month, they would expect to be billed by the close of the following month. They understand there may be some lag due to the time it takes to gather information and work through client billing, etc. However, if three or six months elapse without a statement, there is a question what action is taking place. Keskey noted that they send out a detailed monthly invoice broken down day by day and case by case. He explained the lag they incur. Rose commented that billing lags had to be shortened. It is critical for the board to have timely and accurate financial information in order to render decisions regarding items such as budget amendments. Wilsey briefed the board on the Energy Michigan (EM) Annual Meeting she attended on December 19, 2007 in Lansing, Michigan. Energy Michigan represents alternative, competitive energy providers. The purpose of the annual meeting was to review the current status of the industry, particularly the impacts, threats and opportunities for alternative providers. The primary topics were new electric generation project development in Michigan, the status of the two major utilities (Consumers and Detroit Edison), pending legislation to restructure the industry and limit competition, and efforts to rebalance rates to shift more costs from business to residential customers. In regard to project development, EM reported that one of the major indicators as to whether competition is working is whether new projects can be brought on-line in the current environment. Three new developments in various stages of siting and planning were discussed. The impression was that Michigan's partially deregulated environment was conducive to development of new clean coal generation. Rates and costs of the two major utilities – Consumers Energy and Detroit Edison were discussed under various scenarios. The assessment of rates under Consumers Energy was the most critical. This was due, among other things, to the sale of plants that are lower cost assets and bringing on contracts and new plants at significantly higher rates. The outlook for Consumers Energy customers in the long term is that there is significant upward pressure on rates. The opinion of the moderator was that the new restructuring packages that are being proposed are not intended to protect the ratepayers or to improve efficiency of expanding generation but rather to lock in a rate base to help absorb the significant long-term rate increases that are anticipated. He also discussed the likelihood that for the first time, due to the planning decisions being made (asset sales, generation supply portfolio overly dependent on high cost contracts, lack of generation resources, etc.), rates in the Consumers Energy territories will increase or exceed those of Detroit Edison. In his opinion, DTE rates will be comparatively more stable in terms of their long-term planning. He did anticipate restructuring of rates so more costs would be shifted to the PSCR customers. These customers, in his opinion, would carry the lion's share of costs associated with both the regulatory changes and the resource changes. Wilsey noted that many of the cases covered by the UCRF grants address these issues. Shulman asked what the obstacles were to bringing the new generation projects on-line in a timely manner. Wilsey responded that the developers cited the importance of having enough established contracts to really pay for the projects. The developers were pretty optimistic that the projects were viable and they were making good progress toward bringing them on-line. Uncertainty related to restructuring legislation had the potential to kill the projects more than the current economics. Shultz noted that one of the problems with this legislative package is the review process. It sort of bypasses the PSCR Act 304 process. For example, purchase power contracts can be approved by the Commission in a separate type of proceeding. In general, the review processes in the proposed legislation lacks hearings and shortens the time frame for the Commission to examine the filings made by the utilities. Nelson noted the legislation is slated to move very quickly. Wilsey noted that if passed, it will be important to assess the relevance of the Act 304 process and consider expansion of the scope of review under Act 304. Shulman asked Liskey if there was

anything that precluded members of the board from testifying as to the impact of the proposed legislation? Liskey replied no, he didn't believe so. Rose asked if any of the grantees or their clients were going to testify at the hearings? Shultz noted that they had a mailing going out to all of the members of the individual members of the RRC encouraging them to testify. As 501(c)(3) organizations they are careful with regard to lobbying so as not to jeopardize their status. Shultz offered to share the analysis they are developing for their members. Shulman requested a copy of the analysis be sent to the board members. Nelson commented that they had encouraged the AARP to weigh in on the impacts of the legislation as well. Keskey deferred to Tim Fischer with regard to lobbying. Fischer noted the issue was of interest but he was not certain if they were directly addressing the issue. Shulman inquired about the schedule of committee hearings and noted that individual board members may consider appearances. Isaac asked if the report on the meeting was submitted as a written report. If not, he felt it should be documented with the record of this meeting. Shulman noted that the minutes would reflect the report. Isaac asked if a brief report or summary of the meeting could be provided. Wilsey noted that additional information could be provided.

## **VII. New Business**

### *A. MEC/PIRGIM/EM amendment requests*

Amendment Request #1 – Additional funds requested for existing cases approved under UCRF Grant 08-01. Specific requests are as follows:

Case U-15245, increase legal budget by \$15,000, increase expert budget by \$10,000 and increase 1% administrative budget by \$250.

Case U-13771, increase legal budget by \$14,000, increase expert budget by \$6,000, increase 1% administrative budget by \$200.

Case U-13919 Appeal (IM Power), increase legal budget by \$18,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$200.

Case U-13808 Appeal (DECo), increase legal budget by \$8,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$100.

Case U-13917 Appeal (CECo), increase legal budget by \$3,000, increase expert budget by \$2,000 and increase 1% administrative budget by \$50.

The request includes CECO rate case U-15245, the on-going review of the SNF complaint case in U-13771, and also the court cases, which have decisions and now a strategic decision has to be made as to how to proceed (IM Power or Detroit Edison). He explained the case history and court decisions. His goal is to avoid collateral estoppel and, therefore, is considering a position in both cases. Rose asked him to clarify where he planned to take the case if the state will not hear it. Keskey replied that he would file a motion for Reconsideration at the Supreme Court and seriously consider a cert petition in the U.S. Supreme Court to get a ruling that there is no preemption. Shulman asked which case that recommendation was for? Keskey replied that he was referring to the IM Power case but, if there is a denial in the Edison case, they would probably recommend the same course of action. Rose acknowledged the challenge in determining the most beneficial course. Rose raised issues related to nuclear power, particularly spent nuclear fuel disposal. Keskey explained their concerns related to nuclear issues and what issues they are pursuing on behalf of ratepayers in the UCRF funded cases. Rose asked if the idea of getting other states involved is to show to the Supreme Court that this is an issue of broad concern. Keskey responded affirmatively. Rose addressed the issue of the CECO case filing delay. He asked if there was a statute of limitations or other limitation on how long it could take. Keskey said no – there are potential cash flow benefits to waiting. Keskey noted that this is also a disadvantage to intervenor groups as duplication and multiplicity of cases deciding issues occurs. Rose noted that it was beneficial for Keskey to present this amendment and explain the rationale and purpose early so that the board has time to thoroughly consider the issues. Wilsey asked if Keskey wanted to include the SNF refilling case 13771 in this amendment since there is no anticipated action at this time and there is still \$10,000 in unspent funds. Keskey said the request is included so that they could respond to unforeseen action prior to the next meeting. Isaac asked for clarification of the requested amendment on each case.

Shulman noted that they would consider each case separately. Isaac asked for a comment on the reason for the requested increase in a case that was approved in the prior grant. Wilsey noted that the case had been included in the prior grant and the current grant. The funds from the prior grant lapsed at the end of the grant year. More of the case load shifted into the current year than expected. Rather than trying to carry grant funds forward and billing two separate grant years for the same case, Wilsey recommended Keskey seek an amendment to the current grant. It would have to be supported on the current merits of the case and approved by the board. Droste was comfortable with that recommendation.

Shulman called a recess at 12:01 p.m. Shulman called the meeting back to order at 12:08 p.m. Isaac asked Wilsey if she was recommending the board not approve a portion of grant amendment #1 at this time. She replied that it was not a recommendation, but a question to the grantee if an amendment to the budget for case 13771 was necessary at this time. The board could decide based on the merits of his answer. Shulman asked Wilsey if any of the money was being requested for work already completed on the grants. Wilsey responded no, that it was not retroactive. This is a current grant and work that will be completed in the future. The cases were approved under a previous grant but since they continued past the end of the previous grant cycle, a new grant request was made and approved by the board. Keskey clarified that the initial request for extension (of the previous grant) was based on past practice and that “pancake” billing has never been done. Shulman asked Liskey if he could offer an opinion as to whether the amendment constituted a request for money retroactively. Liskey noted that he had not examined the paper documents, but based on the discussion the amendment request is not for grant 07-02 but for this year’s grant. He noted that the amendment is exactly where it should be.

Shulman commented that he shared the opinion that need for the funds for U-13771 were not demonstrated. He also raised concern with regard to case 13919. He questioned if it was money well spent because of the low likelihood that a petition for cert would be approved. Keskey noted that they had won cases against DOE before related to this issue. The nature of the issue nationally may make this ripe for the Supreme Court. While they would like a ruling that there is no preemption, any decision by the Court one way or another would provide a great deal of direction for the states and ratepayers around the country. Keskey argued that electric ratepayers in Michigan have paid nearly a billion dollars for this contract. That carries immense public interest responsibility from our standpoint. We feel we can offer a convincing, persuasive cert petition. We also benefit from the credibility of follow-through and the cert petition would preclude collateral estoppel in the IM case. Shulman asked if there were any other associations or groups that might share in the expense? Keskey replied that the request was conservative to support his work. Others would have to support their costs. Shulman asked if he felt this would cover the costs of this appeal? Keskey said it includes the actions discussed. If the Supreme Court asks for supplementation or takes the case, that is a different stage not necessarily covered by this request. Rose asked what the Attorney General was doing on the five cases included in the budget amendment request? Liskey did not have the list of cases. He noted that they were participating in 15245 but on different issues. Keskey noted that the AG was not in the appeal of 13919 nor U-13771 but was involved in the other cases on different issues. Isaac raised concern again that this amendment should be a new grant request. He did not agree that the grant should be increased because the old grant lapsed. There is no expectation that funds can be carried over from one grant year to the next. Keskey highlighted examples where the board extended grants in the passed and approved grants for 18 months rather than 12 months. Isaac reiterated that this expectation should not be made going forward. Keskey further argued that budgets are designed well in advance of the actual cases. There is no possible way to determine in advance what changes or demands may develop in a case. It is reasonable to use budget amendments to align the budget with the actual work needed to follow through on the issues. Kostielney called the question.

**Motion by Shulman, second by Rose and motion carried to approve the budget amendment to UCRF 08-01 for case U-15245, increase legal budget by \$15,000, increase expert budget by \$10,000 and increase 1% administrative budget by \$250.**

**Motion by Rose, second by Kostielney and motion failed to approve the budget amendment to UCRF 08-01 for case U-13771, increase legal budget by \$14,000, increase expert budget by \$6,000, increase 1% administrative budget by \$200.** Shulman invited Keskey to bring the issue to the board in the future if the case develops. Kostielney noted that the Board should review the transcript on the issue prior to the meeting should the item come up again. Discussion should deal with additional or new information, to amend – not repeat - the previous discussion.

**Motion by Rose, second by Kostielney and motion carried to approve budget amendment to UCRF 08-01 for Case U-13919 Appeal (IM Power), increase legal budget by \$18,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$200.**

**Motion by Rose, second by Kostielney and motion carried to approve budget amendment to UCRF 08-01 for case U-13808 Appeal (DECo), increase legal budget by \$8,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$100.**

**Motion by Rose, second by Kostielney and motion carried to approve the budget amendment to UCRF 08-01 for Case U-13917 Appeal (CECo), increase legal budget by \$3,000, increase expert budget by \$2,000 and increase 1% administrative budget by \$50.**

Amendment Request #2 – Keskey explained that this request is required to cover the costs associated with cases CECo may file with respect to “nuclear legacy issues”. These issues are derived from Act 304 cases and/or U-14992 – the CECo/ENP case involving Palisades and Big Rock that gave rise to proceeds or cash funds because of the 15 year multi-billion dollar PPA that will be charged through CECo’s PSCR clause under Act 304. CECo has opted to defer nuclear legacy issues to a future case (or cases), the grantee requests funds to allow for continued ratepayer representation on these issues in whatever forum selected by CECo. The budget requested to pursue nuclear legacy issues is \$20,000 legal budget, \$15,000 expert budget and \$350 1% administrative budget. Cases will be reported to the board as they are filed and the budget will be broken down by case, if more than one case is filed. The same hourly rates and charges previously approved under the grant apply to this amendment request.

**Motion by Rose, second by Shulman and motion carried to approve MEC/PIRGIM UCRF Grant 08-01 Amendment #2, addition of nuclear legacy case(s) filed before September 30, 2008, in the total amount of \$35,350 broken down as follows - \$20,000 legal budget, \$15,000 expert budget and \$350 1% administrative budget. Case numbers and filings must be reported to the board and DLEG for inclusion in the grant.**

Rose requested that grantees submit timely billings and that Eklund include a breakdown by case of the budget, amended budget and billings to date. Kostielney asked if there was a more uniform way to achieve the consistency in accounting, reporting and monitoring that is desired. She also noted that the issue was again highlighted in the discussion today of whether their enabling legislation is still valid. It ought to be looked at in a universal, broad way with the current status of utilities and the board’s purpose and mission. Shulman referred back to the legislative package under consideration. Kostielney agreed it should be examined very carefully. Isaac commented that he would like to revisit the spreadsheet that was generated on September 28 and use that as a guide for tracking and monitoring.

Shulman invited Ault to comment before moving on to the next agenda item. Ault noted that he represents smaller utilities in the state. He felt the board had a right to be concerned about the proposed legislative package. He felt the consumer representatives should take a hard look because the package is transformational. It has become a jobs and economic development approach rather than renewable. He noted that if this passes there is a shift from least-cost planning to something built on economic development. It will affect rates. In regard to removals, the Board should not assume that there is a sinister plot behind every removal. Some are strategic, for example, to remove a controversial item if you need a fast result to alleviate a cash flow problem. In regard to spent nuclear fuel, the impression from listening is that there is a belief that no expert forum has ever looked at the substance of the issue. It has been examined substantively on multiple occasions. Does every matter funded by this group therefore, have to proceed to the Supreme Court? Isn’t there a legitimate discussion of whether there has been a

substantial examination and whether ongoing funding is merited? Ault noted that Keskey's issue on nuclear waste is an ongoing matter. Callen noted that there were ominous developments in Washington related to spent nuclear fuel disposal. Ratepayer money is flowing to Washington at a rate of \$750 million per year but the budget is being cut and Harry Reid, Senate Majority Leader, does not support the Yucca Mountain project.

**VIII. Next Meeting**

The next meeting is scheduled April 7, 10:00 a.m., Ottawa Building, 4<sup>th</sup> Floor Training Room

**IX. Adjournment**

The meeting adjourned at 1:17 p.m.

*Note: Full transcripts of this meeting are available upon request.*